

## RETURN

To an Address to His Excellency the Governor General of the 19th March, 1924, for a copy of all correspondence, petitions, protests, letters, resolutions, and other documents exchanged between the Government and any person or persons or organizations, or Provincial Governments or other public bodies in Canada, protesting against the illegal diversion of the waters of the Great Lakes by the Chicago Drainage Commission and of any and all correspondence with the Government of the United States, the Joint International Commission or others on the subject.

Mover: Mr. CHURCH, M.P.

P.C. 721

### PRIVY COUNCIL, CANADA

*CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 27th March, 1912.*

On a Memorandum, dated 25th March, 1912, from the Minister of Marine and Fisheries, stating that he understands that the United States Secretary of War has arranged to hear argument in the matter of the Chicago Drainage Canal scheme, at Washington, on the 27th March, 1912.

The Minister observes that as the proposed works contemplate the diversion of ten thousand cubic feet of water per second from Lake Michigan to the Desplaines River, the question of the effect of any such scheme on navigation in the international boundary waters, and in the St. Lawrence River, calls for careful consideration.

The Minister recommends,—in order that the views of the Canadian Government may be laid before the Secretary of War,—that Messrs:—

Wm. J. Stewart, Chief Hydrographer of Canada, Department of the Naval Service;

Victor W. Forneret, Superintending Engineer, St. Lawrence Ship Channel, Marine and Fisheries Department;

Arthur St. Laurent, Assistant Deputy Minister, Public Works Department;

John Kennedy, Consulting Engineer, Harbour Commissioners of Montreal; and

Daniel Mullen, K.C., St. John, N.B.,

be authorized to attend the meeting to be held at Washington on the 27th March, 1912, in connection with the Chicago Drainage Canal scheme, and to oppose, on behalf of the Canadian Government, any proposal which will result in lowering the level in the International boundary waters and in the St. Lawrence River.

The Committee submit the same for approval.

(Sgd.) RODOLPHE BOUDREAU,

*Clerk of the Privy Council.*



The Honourable

The Secretary of State for External Affairs.

*From the Governor General to His Majesty's Ambassador at Washington.*

GOVERNMENT HOUSE,

OTTAWA, November 23rd, 1912.

No. 145.

SIR,—I have the honour to transmit, herewith, for Your Excellency's consideration, copies of an Approved Minute of the Privy Council for Canada on the subject of the Calumet and Sag Channel.

Your Excellency will observe that my responsible advisers view the making of this Channel with grave concern and would be glad if Your Excellency will protest to the United States Government against its construction being allowed to continue, on the grounds that it would be highly detrimental to the interests of the Dominion.

I have, etc.,  
(Sgd.) ARTHUR.

His Excellency

The Right Honourable, JAMES BRYCE, P.C., etc., etc., etc.,

19th November.

P. C. 3249

PRIVY COUNCIL, CANADA.

*CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 19th November, 1912.*

The Committee of the Privy Council have had before them a report, dated 16th November, 1912, from the Right Honourable the Secretary of State for External Affairs, stating that it has been represented to him that work has been commenced by the City of Chicago and is in progress on a new channel called the Calumet and Sag channel, having for its object the diversion of water from Lake Michigan to the Chicago Sanitary Canal.

The Minister submits that this work is a further menace to the navigation of the Great Lakes and the River St. Lawrence; the present diversion has lowered Lake Huron  $4\frac{1}{4}$  inches and the new channel would lower it  $2\frac{1}{2}$  inches, additional, making a total of  $6\frac{3}{4}$  inches. As each inch represents a loss of 68 tons in the cargo carrying capacity of the largest boats, it is evident that this would result in a loss on each trip of no less than 459 tons.

The Minister represents that the Calumet and Sag channel will carry 4,000 cubic feet per second. At present, with an authorized diversion of 4,167 cubic feet per second, the City of Chicago actually takes from 7,000 to 8,000 cubic feet per second. This will mean that when the Calumet and Sag channel is completed, the City of Chicago will be diverting three times the amount of water authorized.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Royal Highness may be pleased to request His Majesty's Ambassador at Washington to inform the United States Government that Canada views the making of this Calumet and Sag Channel with grave concern and, on the ground that it would be highly detrimental to the interests of the Dominion, to protest to the United States Government against its construction being allowed to go on.

All which is respectfully submitted for approval.

(Sgd.) RODOLPHE BOUDREAU,

*Clerk of the Privy Council.*



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*From His Majesty's Ambassador at Washington to the Governor-General*

No. 217

BRITISH EMBASSY,

WASHINGTON, December 30, 1912.

SIR,—With reference to Your Royal Highness's despatch No. 145 of the 23rd ultimo, on the subject of the Calumet and Sag Channel, I have the honour to transmit, herewith, a copy of a Note from the United States Government in reply to the representations which I addressed to them on the subject.

Your Royal Highness will observe that the note states that your Government have been misinformed in the matter, and that the amount of water to be withdrawn from Lake Michigan to the Chicago and Calumet rivers together will not exceed the total amount already authorized to be withdrawn through the Chicago river alone. I should be glad to know what reply you wish me to make to the United States Government.

I have, etc.,

(Signed) JAMES BRYCE.

His Royal Highness

The DUKE OF CONNAUGHT AND STRATHEARN, K.G.,

etc., etc.,

The Governor General.

Enclosure in No.

*From the Acting Secretary of State of the United States to His Majesty's Ambassador at Washington*

No. 1713

DEPARTMENT OF STATE,

WASHINGTON, December 24, 1912.

EXCELLENCY,—Referring to your note of the 29th ultimo concerning the apprehension felt by the Government of Canada that that work in progress by the City of Chicago on the Calumet and Sag Channel for the diversion of water from Lake Michigan to the Chicago Sanitary Canal will prove a menace to the navigation of the Great Lakes and the St. Lawrence River, and result in the diversion of water by the city in excess of the amount now authorized, I have the honour to communicate the substance of a report by the Chief of Engineers, United States Army, made to the Secretary of War on the 16th instant, in explanation of the situation and which I feel confident will satisfy Your Excellency that the Government of Canada has been misinformed in the matter, and that the amount of water to be withdrawn from Lake Michigan to the Chicago and Calumet rivers together will not exceed the total amount already authorized to be withdrawn through the Chicago River alone:—

“The Calumet and Sag Channel is being constructed under authority of a permit issued by the War Department June 30, 1910. Its purpose is to substitute two routes instead of one between Lake Michigan and the centre third of the Drainage Canal of the Sanitary District of Chicago, on the express condition however, that there shall be no increase in the amount of water diverted from Lake Michigan. The language of the permit of June 30, 1910, on that point, is as follows:—



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"That the amount of water withdrawn from Lake Michigan, through the Chicago and Calumet Rivers together, shall not exceed the total amount of 250,000 cubic feet per minute (4,167 cubic feet per second) already authorized to be withdrawn through the Chicago River alone".

"The amount of diversion is not only restricted by the permit but it is also controlled by the fact that the new channel will unite with the Drainage Canal at a point some distance above the point of its discharge into the Des Plaines River; and, from the junction to the point of discharge, the flow of water through the Chicago River combined with that flowing through the Calumet or Sag Channel, must find its exit through some miles of the existing section of the Drainage Canal, for which no enlargement is authorized or contemplated by the War Department.

"At the time the permit was given to the Sanitary District of Chicago in 1899 for its original diversion of water from Lake Michigan through the Chicago River a connection with the Calumet River was not mentioned, but if it had been, it is probable that a connection with that river as well as with the Chicago River would have been allowed. So long as the waterflow remains unchanged and the exit remains unenlarged, there seems to be no special objection to allowing an entrance to the canal from both rivers, instead of confining it to a single one; especially since, if the new (Calumet) route be developed later to a navigable state, the doubled route between the Lake and the Drainage District dock frontage will be greatly to the advantage of navigation interests.

"The question of the final total amount of water which the War Department may allow the Sanitary District of Chicago to divert from Lake Michigan is still before the Secretary of War for consideration, and when his decision on that point is made, it will apply to the entire diversion, whether through a single entrance channel or through two entrance channels."

I have etc.,

(Signed) HUNTINGTON WILSON,  
Acting Secretary of State.

His Excellency The Right Honourable JAMES BRYCE, O.M.,  
Ambassador of Great Britain.

Telegram

*Mr. Bryce to the Governor General*

WASHINGTON, D.C., January 13, 1913.

Referring to Previous correspondence with Prime Minister of last February Secretary of State for War has refused application of Chicago sanitary district.

(Sgd.) BRYCE.

*From His Majesty's Ambassador at Washington to the Governor General*

No. 7

BRITISH EMBASSY,

WASHINGTON, January 14, 1913.

SIR,—With reference to my telegram of yesterday, I have the honour to transmit to Your Royal Highness herewith copies of the decision of the Secre-



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tary of War in the matter of the application made by the Trustees of the Sanitary District of Chicago for permission to divert water from Lake Michigan.

I have the honour to be, sir,

Your Royal Highness'

most obedient, humble servant,

(Sgd.) JAMES BRYCE.

His Royal Highness

The DUKE OF CONNAUGHT AND STRATHEARN, K.G.,

etc., etc., etc.,

The Governor General.

(To be held as *Confidential* until date of release, which will be for the morning papers of January 13, 1913.)

DECISION OF THE SECRETARY OF WAR IN THE MATTER OF THE APPLICATION OF THE TRUSTEES OF THE SANITARY DISTRICT OF CHICAGO, ILL., FOR PERMISSION TO DIVERT FROM LAKE MICHIGAN 10,000 CUBIC FEET OF WATER PER SECOND.

IN THE MATTER of the application of the trustees of the Sanitary District of Chicago for permission to divert from Lake Michigan 10,000 cubic feet of water per second.

WAR DEPARTMENT

WASHINGTON, January 8, 1913.

The Sanitary District of Chicago applies to the War Department for permission to increase the amount of water it is authorized to withdraw from Lake Michigan from 4,167 cubic feet per second, the amount now authorized, to 10,000 cubic feet per second.

The Chicago Drainage Canal was opened in January, 1900. It reverses the flow of the Chicago River, which formerly emptied into Lake Michigan, and as a result a portion of the waters of that lake, instead of following their former course through Lakes Huron, Erie, and Ontario into the St. Lawrence, are now carried across the watershed into the Illinois River, and thence to the Mississippi and the Gulf of Mexico. The canal thus serves as a system of drainage for the city of Chicago, carrying the sewage of that city southward to the Mississippi, and thus protects the water supply of that city, which is taken from Lake Michigan.

Permission to divert water from Lake Michigan was first granted by my predecessor, Secretary Alger, on May 8, 1899. He permitted a flowage of 5,000 cubic feet per second, but his permit contained the following conditions:—

1. That it be distinctly understood that it is the intention of the Secretary of War to submit the questions connected with the work of the Sanitary District of Chicago to Congress for consideration and final action, and that this permit shall be subject to such action as may be taken by Congress.

2. That if, at any time, it becomes apparent that the current created by such drainage works in the south and main branches of Chicago River be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its south branch.



Subsequently, during the administration of Secretary Root, the amount of the current permitted to be taken was modified or restricted until December 5, 1901, when it was fixed at the amount now permitted, and these permits contained the conditions that the permission herein given shall be subject to such modification as in the opinion of the Secretary of War the public interests may from time to time require.

On March 14, 1907, an application made for permission to divert an additional 4,000 cubic feet per second for the purpose of reversing the current of the Calumet River and flowing that river also through the canal to drain the southern portion of Chicago was denied by Secretary Taft in an opinion in which he referred once more to the desirability of submitting "this question of capital and national importance to the Congress of the United States."

It is clear that even under the conditions heretofore manifested on these applications, the proposition to divert the waters of Lake Michigan into another watershed has not been entertained without hesitation and careful restriction by my predecessors. The propriety of obtaining congressional sanction for the project has been pointed out from the beginning; and the form in which the permit has been granted, even for the moderate amount of diversion permitted, has been so phrased as to indicate that the permission was prejudicated upon the absence of any substantial injury to commerce.

The sanitary canal has never received the direct sanction of Congress. It was built solely under the authority of the State of Illinois, as given in its 1889 general act for creating sanitary districts. And although pursuant to the suggestion of my predecessors the question of the propriety of its diversion of water from Lake Michigan was presented urgently in the reports of the Chief of Engineers for the years 1899 and 1900 as transmitted to Congress, no action upon the question has ever been taken by that body. In the argument before me it was urged that the present canal represented the growth and development of a national policy expressed in two acts of Congress, 1822 and 1827, which authorized the construction of a canal "to connect the Illinois River with Lake Michigan," thus connecting the two watersheds. (Acts of Mar. 30, 1882, and Mar. 2, 1827.) But these statutes authorized a canal for the purpose of navigation and not sanitation. (*Missouri v. Illinois*, 200 U. S., 526.) The Illinois and Michigan Canal, actually constructed under their authority, derived its water for navigation purposes from the Calumet, Des Plaines, and Chicago Rivers, and not from the Lakes. And although in the latter part of its existence it was used to a very slight extent to help purify the waters of the Chicago River and thus sanitize the city of Chicago, such a purpose could not have been dreamed of at the time its construction was authorized by Congress, 90 years ago. I can not see that its authorization and construction offer the slightest congressional sanction for the great canal now under discussion, which was not even contemplated until much more than half a century later. Even at the time when the present canal was constructed and opened it is very evident that its ultimate possible effect upon the navigation of the Great Lakes was not clearly realized by those interested in that navigation. The evidence before me indicates that the withdrawal of water from Lake Michigan at Chicago would require about five years to produce its full effect upon the levels of the Great Lakes (see report of International Waterways Commission on Chicago Drainage Canal, p. 7), and that this effect be still further obscured by periodic oscillations in the lake levels. These facts may easily explain any inaction on the part of the Nation and their representatives to this withdrawal of water and make it clear that any argument of implied acquiescence must be scrutinized with unusual care.

In this respect the situation is now very different. The present application was opposed by representatives of 23 cities and 6 States interested in harbors



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and commerce upon the Great Lakes, notably the cities of Duluth, Milwaukee, Toledo, Cleveland and Buffalo. It was opposed by representatives of the navigation interests engaged on the Chicago River as well as on the Great Lakes, and by the official representatives of the Canadian Government as well as private Canadian interests engaged in the navigation of the Lakes and the St. Lawrence River, including representatives of the cities of Kingston and Montreal.

A very careful consideration of the voluminous evidence and statements submitted, as well as a consideration of the reports of other commissions and boards of engineers who have investigated the subject, leaves no doubt in my mind that the withdrawal of 10,000 cubic feet per second would substantially interfere with the navigable capacity of the Great Lakes and their connecting rivers. The Chief of Engineers, whose statutory authority in passing upon this application is concurrent with and independent of my own, and whose opinion upon such a question of scientific conclusion must be given especial weight, so states in his recommendation. His conclusions are corroborated by the authority of other boards of investigation, notably the report of the International Waterways Commission of January 4, 1907.

Careful observations and calculations conducted under the offices of the United States Lake Survey and reported through the Chief of Engineers, covering observations for the last 46 years, indicate that a withdrawal of 10,000 cubic feet per second would reduce levels at various places as follows:

	Inches.
Lakes Huron and Michigan .....	6.9
Lake St. Clair .....	6.3
Lake Erie .....	5.4
Lake Ontario .....	4.5
St. Lawrence River at Rapide Plat.....	4.8+

The foregoing effects would be produced at mean lake levels; the lowering effects would be much greater at low-water periods—the precise time when any additional shortage would be most keenly felt. This reduction would create substantial injury in all of the American harbors of the Great Lakes and in the St. Marys, St. Clair, and Detroit Rivers. It would produce equal injury in Canadian harbors on the Great Lakes, and a still greater injury on the lower St. Lawrence, the Canadian officials claiming a probable lowering effect of 12 inches at Montreal at low water.

The United States has improved about 106 harbors and rivers on the Great Lakes affected by this diversion and has spent on such improvements over ninety millions of dollars. The Canadian Government has improved over 50 harbors on Georgian Bay and Lakes Huron, St. Clair, Erie, and Ontario. By treaty, American vessels are accorded equal rights of navigation with Canadian vessels in all these waters, including the St. Lawrence River. The reduction of the water in these harbors and channels would diminish to just that extent the amount of these improvements, and would nullify to just that extent the effects of the moneys which have been appropriated for that purpose by the respective Governments. Connecting various portions of these waterways are the two canals at the Sault Ste. Marie, the Welland Canal, and a number of canals on the St. Lawrence River. The available depth of water over one or all sills of each of these canals would be affected, and in some cases reconstruction might even be made necessary.

The enormous lake traffic which uses these harbors and these rivers is increasing with great rapidity, both in gross volume and in the size and average draft of the vessels employed therein. The Chief of Engineers reports that to lower the water surface 6 inches would reduce the permissible load of one of



the large modern vessels by from 300 to 550 tons, with a consequent loss of from \$3,600 to \$7,500 in freights for such vessel per season. The International Waterways Commission reported that it would be a conservative estimate which would make the loss to the navigation interests resulting from a reduction of 6 inches in the depth of water as \$1,500,000 per annum, or a sum which, capitalized at 4 per cent, would amount to a loss of \$37,500,000 (see third progress report of International Waterways Commission of Dec. 1, 1907, p. 24). The lowest careful estimate of injury to American vessels alone is reported by the Chief of Engineers as \$1,000,000 per year.

The argument was made before me that, owing to the well-known fact that the levels of the lake vary, owing to winds and change of barometric pressure, by amounts even greater than the reduction which would be caused by this canal, therefore the proposed reduction is of no consequence. This argument is well disposed of in the report of the International Waterways Commission of January 4, 1907, on page 8, as follows:—

It is evident that the average level of the lake may be lowered considerably without the change becoming immediately apparent, and that fact has been used as an argument to prove that the lowering caused by the Chicago Drainage Canal is of no consequence to those interested in navigation. Since they can not see it they will not know it and will not feel it. The argument is fallacious. It is true that they can not see it immediately, but they will soon feel it and will know it through the most costly means of acquiring knowledge—the injury to their material interests. The oscillations will remain the same as before but low water will fall lower and high water will rise less high. The average draft of vessels must be diminished by the amount that the average level is lowered unless the depth be restored by remedial works.

In a word, every drop of water taken out of Chicago necessarily tends to nullify costly improvements made under direct authority of Congress throughout the Great Lakes, and a withdrawal of the amount now applied for would nullify such expenditures to the amount of many millions of dollars, as well as inflict an even greater loss upon the navigation interests using such waters.

On the other hand, the demand for the diversion of this water at Chicago is based solely upon the needs of that city for sanitation. There is involved in this case no issue of conflicting claims of navigation. The Chief of Engineers reports that so far as the interests of navigation alone are concerned, even if we should eventually construct a deep waterway from the Great Lakes to the Mississippi over the route of the sanitary canal, the maximum amount of water to be diverted from Lake Michigan need actually be not over 1,000 feet per second, or less than a quarter of the amount already being used for sanitary purposes in the canal. This estimate is confirmed by the report of the special board of engineers on the deep waterway from Lockport, Ill., to the mouth of the Illinois River, dated January 23, 1911. It is also confirmed by the practical experience of the great Manchester Ship Canal in England. From the standpoint of navigation alone in such a waterway too great a diversion of water would be a distinct injury rather than a benefit. It would increase the velocity of the current and increase the danger of overflow and damage to adjacent lands.

We have, therefore, presented in this case claims of entirely different characters and jurisdictions—the claim of sanitation on the one side and of navigation on the other; the vital interest of a single community on the one side and the broad interest of the commerce of the nation on the other. The discretion given to the Secretary of War under sections 9 and 10 of the act of 1899 is very broad, but I have very grave doubts as to whether it was intended



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to authorize him to grant a permit which would inflict a substantial injury upon commerce in order to benefit sanitation. The entire purpose and scope of that legislation was to make him the guardian of the commercial interests of the nation represented in their waterways. And while he sometimes under that statute must decide that the interests of one class of transportation are less important and must yield to the conflicting interests of another class, I have considerable doubt whether it was intended to give him authority to sacrifice substantial interests of navigation to entirely different claims over which he normally has no jurisdiction whatever.

But however that may be, and without resting my decision upon the question of my legal authority, I am quite clear as a matter of discretion that under the facts presented by this case no further diversion of water should be permitted at Chicago without the direct sanction of the Congress of the United States. I do not for one moment minimize the importance of preserving the health of the great city of Chicago; but when a method of doing this is proposed which will materially injure a most important class of the commerce of the nation and which will also seriously affect the interests of a foreign power, it should not be done without the deliberate consideration and authority of the representatives of the entire nation. The growth of Chicago is phenomenal and its representatives are quite unwilling to put any final limit to the demand which may be made upon the waters of Lake Michigan for its sanitation under the system now in use. I have before me the report in 1911 of the president of the sanitary district, in which he says:—

I am of the opinion that the presumption that our water supply is to be limited to 10,000 cubic feet per second, or 600,000 cubic feet per minute, is gratuitous and mischievous and should not be voiced by the officials of this district. I believe that we should have the volume requisite to our needs as they appear and are justified.

It is therefore quite conceivable that compliance with their sanitary needs according to this method of sanitation may eventually materially change this great natural watercourse now existing through the Lakes. The weighing of the sanitation and possibly the health of one locality over against the commerce of the rest of the Nation and the consideration of our relations and obligations to Canada in respect to a great international waterway are not matters of mere technical or scientific deduction. They are broad questions of national policy. They are quite different in character, for example, from the question of fixing the proper location of a pierhead line or the height or width of a drawbridge over a navigable stream—fair samples of the class of questions which come to the Secretary of War for decision under the above-mentioned act of 1899. While the researches and opinions of experts in the respective fields are necessary and useful as an assistance toward reaching a fair and proper policy, the final determination of that policy should belong not to an administrative officer but rather to those bodies to whom we are accustomed to entrust the making of our laws and treaties.

In my view of the proper exercise of my discretion in this matter the foregoing considerations are sufficient for a decision of this case. Having reached the conclusion that the proposed diversion of the waters of Lake Michigan would substantially injure the interests of navigation on the Great Lakes which it is my legal duty to protect, it would clearly follow that the present application should be denied.

I have carefully examined, however, the evidence which both sides have introduced bearing upon the sanitary needs of the city of Chicago, and my conclusion is in no way shaken. I am not persuaded that the amount of water applied for is necessary to a proper sanitation of the city of Chicago. The



evidence indicates that at bottom the issue comes down to the question of cost. Other adequate systems of sewage disposal are possible and are in use throughout the world. The problem that confronts Chicago is not different in kind but simply larger and more pressing than that which confronts all of the other cities on the Great Lakes, in which nearly 3,000,000 people of this country are living. The urban population of those cities, like that of Chicago, is rapidly increasing, and a method of disposition of their sewage which will not injure the potable character of the water of the Lakes must sooner or later be found for them all. The evidence before me satisfies me that it would be possible in one of several ways to at least so purify the sewage of Chicago as to require very much less water for its dilution than is now required by it in its unpurified condition. A recent report of the engineer of the sanitary commission (Oct. 12, 1911) proposes eventually to use some such method, but proposes to postpone its installation for a number of years to come, relying upon the present more wasteful method in the meanwhile. It is manifest that so long as the city is permitted to increase the amount of water which it may take from the Lakes, there will be a very strong temptation placed upon it to postpone a more scientific and possibly more expensive method of disposing of its sewage. This is particularly true in view of the fact that by so doing it may still further diminish its expenses by utilizing the water diverted from the Lakes for water power at Lockport. But it must be remembered that for every unit of horsepower realized by this water at Lockport four units of similar horsepower would be produced at Niagara, where the natural conditions are so much more favorable. Without, therefore, going more into detail in a discussion of this question, I feel clear that no such case of necessity has been presented by the evidence before me as would justify the proposed injury to the many varied interests in the great waterways of our lakes and their appurtenant rivers.

It remains only to consider certain special arguments that have been pressed upon me. It has been urged that the levels of the lakes, even if lowered, could be restored by compensating works. To a certain extent that is true. But the very nature of this consideration offers another illustration of the importance of having the whole question passed upon by Congress. Such compensating works can only be constructed by the authority of Congress and at very considerable cost. It is not a matter which is in the hands of the Secretary of War. Permission to divert water which will at one and the same time nullify the effect of past appropriations and make necessary similar expenditures in the future, should be granted only with the express consent of the body in whose hands the making of such appropriations and the authorization of such works rest.

Furthermore, in most cases such compensating works could only be constructed with the joint consent of our neighbor Canada. The United States Government alone would be unable, even if it were willing to spend its own funds, to compensate for the damage done through the lowering of these levels unless Canada were willing to join in constructing the portion of such works which would necessarily stand upon Canadian soil.

The question therefore becomes not merely national but international, and this leads me to the consideration of the arguments which were urged by both sides in reference to the treaty with Great Britain in respect to Canada of January 11, 1909. A careful consideration of that treaty fails to indicate to me that it is in any way controlling upon the questions now before us. It gives to the citizens of both countries certain mutual rights of navigation in the waters of the Great Lakes and their connecting rivers; but beyond that the question of the right to this diversion at Chicago seems to me to have been carefully excluded. The applicants for the permit have urged upon me that article 8 of the treaty gives a preference to the uses of water of the lakes for domestic and



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sanitary purposes over the uses of such water for navigation. Article 8, however, applies only to future cases brought before the International Joint Commission; and furthermore I am clearly of the opinion that the domestic and sanitary purposes referred to in that article were intended to be the "ordinary" uses of such waters for domestic and sanitary purposes referred to in article 3. It would be quite contrary to our own national policy to give such a preference to an extraordinary sanitary use of such a character as to create a substantial injury to navigation. The matter has been before our own Supreme Court in the case of the *United States v. Rio Grande Dam and Irrigation Co.* (174 U.S. 690). In that case the Supreme Court held that a company which proposed to take the water of the Rio Grande River for the purpose, among others, "of supplying water to cities and towns for domestic and municipal purposes" could be prevented from so doing when the result would be a substantial injury to the navigability of the Rio Grande River farther down. In its opinion the court said:—

The question always is one of fact, whether such appropriation substantially interferes with the navigable capacity within the limits where navigation is a recognized fact. In the course of the argument this suggestion was made, and it seems to us not unworthy of note, as illustrating this thought. The Hudson River runs within the limits of the State of New York. It is a navigable stream and a part of the navigable waters of the United States, so far at least as from Albany southward. One of the streams which flows into it and contributes to the volume of its waters is the Croton River, a nonnavigable stream. Its waters are taken by the State of New York for domestic uses in the city of New York. Unquestionably the State of New York has a right to appropriate its waters, and the United States may not question such appropriation, unless thereby the navigability of the Hudson be disturbed. On the other hand, if the State of New York should, even at a place above the limits of navigability, by appropriation for any domestic purposes, diminish the volume of waters, which, flowing into the Hudson, make it a navigable stream, to such an extent as to destroy its navigability, undoubtedly the jurisdiction of the National Government would arise and its power to restrain such appropriation be unquestioned; and within the purview of this section (act of Sept. 19, 1890, ch. 907) it would become the right of the Attorney General to institute proceedings to restrain such appropriation.

The treaty, however, contains provisions in its article 10 by which "any questions or matters of difference arising between the high contracting parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada, either in relation to each other or to their respective inhabitants, may be referred for decision" to an international joint commission established by the said treaty. The hearing before me brought forth the fact that the Government of Canada regards the proposal contained in this application as one which affects the material interests of that country. The establishment by formal treaty between the two countries of a tribunal with jurisdiction to decide just such questions seems to me to afford an additional reason against the assumption of jurisdiction to decide the question by an administrative officer of one of those countries.

In short, after a careful consideration of all the facts presented, I have reached the following conclusions:

First. That the diversion of 10,000 cubic feet per second from Lake Michigan, as applied for in this petition, would substantially interfere with the navigable capacity of the navigable waters in the Great Lakes and their connecting rivers.



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Second. That that being so, it would not be appropriate for me without express congressional sanction, to permit such a diversion, however clearly demanded by the local interests of the sanitation of Chicago.

Third. That on the facts here presented no such case of local permanent necessity is made evident.

Fourth. That the provisions of the Canadian treaty for a settlement by joint commission of "Questions or matters of difference" between the United States and Canada offer a further reason why no administrative officer should authorize a further diversion of water, manifestly so injurious to Canada, against Canadian protest.

The prayer of the petition is therefore denied.

HENRY L. STIMSON,  
*Secretary of War.*

*From the Governor General to His Majesty's Ambassador at Washington*

CANADA

No. 16

GOVERNMENT HOUSE, OTTAWA, February 25, 1913.

SIR,—With reference to Your Excellency's Despatch No. 217 of the 30th December on the subject of the diversion of water from Lake Michigan to the Chicago Sanitary Drainage Canal, I have the honour to transmit herewith, copies of an Approved Minute of the Privy Council for Canada submitting a memorandum embodying the views of the Department of Public Works, the Department of Marine and Fisheries and the Commission of Conservation on the opinion expressed by the Government of the United States as contained in Your Excellency's Despatch referred to above.

Your Excellency will observe that my responsible advisers are anxious that representations should be made to the United States Government in the sense of this Minute maintaining the protest against the proposed construction of the Calumet Sag Channel and against the continued injurious affection of the said boundary waters.

I have, etc.,  
(Signed) ARTHUR.

His Excellency

The Right Honourable JAMES BRYCE, O.M.

February 21.

Enclosure in No. —

P.C. 398

CERTIFIED COPY of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 21st February, 1913.

1. The Committee of the Privy Council have had before them a report, dated 17th February, 1913, from the Right Honourable the Secretary of State for External Affairs, upon a despatch from His Majesty's Ambassador at Washington, dated 30th December, 1912, on the subject of the diversion of water from Lake Michigan to the Chicago Sanitary Drainage Canal.

2. The Minister observes that this despatch conveyed to Your Royal Highness an expression of the opinion of the United States Government that Your



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Royal Highness's advisers had been misinformed in the matter, and that, as by the terms of the War Department permit under which the Calumet and Sag Channel is being constructed, the amount of water to be withdrawn through the Chicago and Calumet Rivers together would not exceed the total amount (4167 cubic feet per second) already authorized to be withdrawn through the Chicago River alone, no danger to navigation interests need be apprehended.

3. The Minister has submitted to the Department of Public Works, to the Department of Marine and Fisheries and to the Commission of Conservation the opinion expressed by the Government of the United States and has the honour to submit a memorandum, hereto attached, embodying the views (in which he entirely concurs) that have thus been elicited from the two Departments and from the Commission.

4. The Minister states that no official information was received by the Canadian Government with regard to the construction of the Canal or the request for diversion of water, and consequently no protest was made at the time by that Government. Notwithstanding such absence of notice Canada's failure to protest has been advanced as a reason for assuming her acquiescence in the proposal to divert 10,000 cubic feet per second, a fact which renders it the more desirable that Canada shall now make plain its attitude of steadfast opposition to the policy involved in the proposed diversion.

5. Your Royal Highness's advisers have already pointed out in the Minute of Council, approved on the 19th November, 1912, the serious detriment to navigation interests caused by the diversion of water from Lake Michigan and the consequent lowering of the levels of the Great Lakes. It is pertinent to observe further that the full effect of this diversion is at the present time mitigated to some extent by the fact that it is made from a reserve that has accumulated in these years of plenty. There is every reason to apprehend that when years of low precipitation return the harmful effects will be still more severely felt.

6. Considering, therefore, the fact that in practice the Chicago Sanitary District has greatly exceeded the provisions of the War Department permit; considering further its avowed policy largely to increase the present diversion, and having regard to the fact that the proposed Sag and Calumet Channel cannot be of service for sanitation purposes unless the diversion at present permitted should be increased, and that its construction would permit of a largely increased flow through the portion of the channel between Sag and Lockport which cannot under existing conditions take place without danger to navigation in the main channel between Lake Michigan and Sag, Your Royal Highness's advisers are constrained to regard the construction of the proposed channel as constituting a grave menace to important Canadian interests; and they consider it desirable that Canada's protest as put forward in the Minute of Council approved by Your Royal Highness on the 19th November should be maintained, on the ground that any diversion of water from Lake Michigan which prejudicially affects the navigation of the Great Lakes constitute an invasion of the rights secured to Canada by the Ashburton-Webster Treaty of 1842 in the channels in the river St. Lawrence and in the river Detroit and in the other passages and channels referred to in Article 7 of that Treaty, and further of the rights of navigation in boundary waters and in Lake Michigan to which this Dominion is entitled under Article 1 of the Boundary Waters Treaty of 1909.

7. While relying upon the provisions of the Treaties above mentioned and any other relative Treaties and Conventions, Your Royal Highness's advisers are not prepared to admit, and they do not admit that apart from these Treaties the authorities of the United States or the authorities of any State have the



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right under the recognized principles of International Law to divert from Lake Michigan by any means, or for any purpose, such an amount of water as will prejudicially affect the navigation of boundary waters in which both Canada and the United States are deeply and vitally interested. It is submitted moreover that the navigation of these boundary waters, upon the improvement and development of which as International waterways each country has spent many millions of dollars, ought to be secured absolutely from injurious diversion on either side of the boundary line to the end that the interest of navigation and commerce, common to both countries, may be adequately preserved.

The Committee, on the recommendation of the Secretary of State for External Affairs, advise that Your Royal Highness may be pleased to forward a copy of this Minute, if approved, to His Majesty's Ambassador at Washington with a request that he make representations to the United States' Government in the sense thereof maintaining the protest against the proposed construction of the Calumet Sag Channel and against the continued injurious affection of the said boundary waters.

All which is respectfully submitted for approval.

(Signed) RODOLPHE BOUDREAU,  
*Clerk of the Privy Council.*

*MEMORANDUM respecting the despatch from His Excellency the British Ambassador at Washington of 30th December, 1912, conveying reply of the Acting-Secretary of State of the United States of the 27th December, 1912, with regard to the diversion of water from Lake Michigan to the Chicago Sanitary Drainage Canal.*

1. The despatch of His Excellency the British Ambassador at Washington, above mentioned, and accompanying reply of the Acting-Secretary of State of the United States, have been submitted to the Department of Marine and Fisheries, to the Department of Public Works and to the Commission of Conservation.

2. Reports have been received from the two departments and from the commission, the effect of which is expressed in the following paragraphs of this memorandum.

3. According to information available to the Government of Canada, the Chicago sanitary drainage canal was built solely under the authority of the state of Illinois without federal authority or sanction; and upon its completion the United States government was first officially informed of its existence by a request for permission to divert water from Lake Michigan for the dilution of the sewage of Chicago.

4. Permission to divert water from lake Michigan was first granted by the federal authorities on May 8, 1899, subject to the conditions therein stated. The flowage then permitted was 5,000 cubic feet per second.

5. Subsequently the amount of the current permitted to be taken was modified and on the 5th of December, 1901, it was fixed at 4,167 cubic feet per second.

6. Although the federal authorities have never given permission to divert a greater amount than 4,167 cubic feet per second it is a matter of public notoriety that at least 8,000 cubic feet per second, and probably nearly nine thousand cubic feet per second are now being diverted through the canal for the purpose above mentioned.

7. The trustees of the Chicago sanitary district have displayed remarkable persistency in the attempt to divert an increased volume through the canal.



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An application to authorize a flowage of 10,000 cubic feet per second was made in 1912, to the Secretary of War, who dismissed the application on the 8th January, 1913.

8. The Chicago sanitary drainage canal between Sag and Lockport has a capacity of 14,000 cubic feet per second and those in control avow the intention of diverting that amount from lake Michigan if it can be done without injury to the navigation of the Chicago river. Evidences of that intention may be found in the following extract from the report of the president of the sanitary district for the year 1911:—

“I am of the opinion that the presumption that our water supply is to be limited to 10,000 cubic feet per second, or 600,000 cubic feet per minute is gratuitous and mischievous and should not be voiced by the officials of this district. I believe that we should have the volume requisite to our needs as they appear and are justified.”

9. It is urged by the United States authorities that aside from the provisions of the War Department permit, further protection against undue diversion is afforded by the fact that no enlargement of the existing section of the drainage canal below the point at which the Calumet and Sag channel would enter the same, is authorized or contemplated in connection with the works in progress. Such an argument is by no means convincing because, as has already been pointed out, the drainage canal below Sag has now a capacity of 14,000 cubic feet per second. Thus, the sanitary district could, if unrestricted, pass through it a flow greater than the combined capacities of the Calumet and Sag Channel and the Chicago river without increasing the section of the canal between the point of junction and its discharge into the Desplaines river.

10. It appears that in the main canal between lake Michigan and Sag the flow is at present limited not on account of the size of the canal but out of consideration for navigation interests which cannot manage their vessels in that channel with stronger currents than would be caused by a flow of 9,000 cubic feet per second.

11. It is of importance further to consider that for the sanitation purposes forming the ostensible object of the canal's construction, the amount of flow authorized by the War Department permit,—measured by the standard of the sanitary district's charter which calls for a flow of  $3\frac{1}{2}$  cubic feet per second for each thousand of population,—is only sufficient for a population of one and one quarter millions, a number admittedly not greater than that which is now dependent on the drainage canal. This being the case it is not apparent what advantage, for such sanitation purposes, can be derived from the construction at great cost of a new channel which must obtain its flow, if the restrictions of the permit are observed, at the expense of the main drainage canal.

12. Importance is attached to the reasons given by the secretary of war in his decision of 8th January, 1913, upon the application of the trustees of the sanitary district of Chicago. The conclusions of the secretary of war are as follows:—

“First. That the diversion of 10,000 cubic feet per second from lake Michigan, as applied for in this petition, would substantially interfere with the navigable capacity of the navigable waters in the Great Lakes and their connecting rivers.

“Second. That that being so, it would not be appropriate for me, without express congressional sanction, to permit such a diversion, however clearly demanded by the local interests of the sanitation of Chicago.

“Third. That on the facts here presented no such case of local permanent necessity is made evident.



“Fourth. That the provisions of the Canadian Treaty for a settlement by joint commission of “questions or matters of difference” between the United States and Canada offer a further reason why no administrative officer should authorize a further diversion of water, manifestly so injurious to Canada, against Canadian protest.”

13. Inasmuch as the trustees of the Chicago sanitary district are at the present time diverting nearly the entire amount for which permission was refused, it is apparent that not only the navigation interests of Canada but those of the United States as well are suffering detriment from the course now being pursued.

14. The following extract from the decision of the Secretary of War is pertinent and cogent:—

“A very careful consideration of the voluminous evidence and statements submitted, as well as a consideration of the reports of other commissions and boards of engineers who have investigated the subject, leaves no doubt in my mind that the withdrawal of 10,000 cubic feet per second would substantially interfere with the navigable capacity of the Great Lakes and their connecting rivers. The Chief of Engineers, whose statutory authority in passing upon this application is concurrent with and independent of my own, and whose opinion upon such a question of scientific conclusion must be given special weight, so states in his recommendation. His conclusions are corroborated by the authority of other boards of investigation, notably the report of the International Waterways Commission of January 4, 1907.

“Careful observations and calculations conducted under the officers of the United States Lake Survey and reported through the Chief of Engineers, covering observations for the last 46 years, indicate that a withdrawal of 10,000 cubic feet per second would reduce levels at various places as follows:—

	Inches.
Lakes Huron and Michigan.. . . . .	6.9
Lake St. Clair.. . . . .	6.3
Lake Erie.. . . . .	5.4
Lake Ontario.. . . . .	4.5
St. Lawrence River at Rapide Plat.....	4.8 x

“The foregoing effects would be reduced at mean lake levels; the lowering effects would be much greater at low-water periods—the precise time when any additional shortage would be most keenly felt. This reduction would create substantial injury in all of the American harbours of the Great Lakes and in the St. Marys, St. Clair, and Detroit Rivers. It would produce equal injury in Canadian harbours on the Great Lakes and a still greater injury on the lower St. Lawrence, the Canadian officials claiming a probable lowering effect of 12 inches at Montreal at low water.”

15. Canada has expended in the construction of canals and in the improvement of lakes, rivers and harbours, forming part of the St. Lawrence Waterway, about two hundred million dollars and further large expenditures are now in contemplation. The benefits resulting from such expenditure will be largely minimized and may even be destroyed, if the existing diversion from Lake Michigan be permitted to continue.



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*From His Majesty's Ambassador at Washington to the Governor General*

No. 40.

BRITISH EMBASSY,

WASHINGTON, March 25, 1913.

SIR.—I have the honour to transmit herewith copy of the Note which I have addressed to the United States Government in pursuance of the instructions contained in Your Royal Highness's despatch No. 16 of February 25 regarding the Calumet and Sag Channel.

The United States Government have promised to give careful consideration to the views of Your Royal Highness' Government.

I have, etc.,

(Signed) JAMES BRYCE.

His Royal Highness

The DUKE OF CONNAUGHT AND STRATHHEARN, K.G.,

etc., etc., etc.,

The Governor General.

Enclosure No.

*From His Majesty's Ambassador at Washington to Secretary of State of the United States.*

No. 67.

BRITISH EMBASSY,

WASHINGTON, March 17, 1913.

SIR,—On receipt of your predecessor's note No. 1713 of the 24th of December last relative to the protest of the Canadian Government against the construction of the Calumet and Sag Channel for the diversion of water from Lake Michigan, I at once communicated the information contained in that note to the Canadian Government.

In reply the Governor General has sent me a memorandum, of which a copy is enclosed, questioning the correctness of the statements furnished to the State Department by the Department of Engineers.

This memorandum, which is based on information obtained from the Canadian Department of Public Works, the Department of Marine and Fisheries and the Commission of Conservation, represents the views of the Canadian Government, who, in calling attention to it, offer the following further observations.

They state that: no official information was received by the Canadian Government with regard to the construction of the canal or the request for diversion of water, and consequently no protest was made at the time by that Government. Notwithstanding such absence of notice Canada's failure to protest has been advanced as a reason for assuming her acquiescence in the proposal to divert 10,000 cubic feet per second, a fact which renders it the more desirable that Canada should now make plain its attitude of steadfast opposition to the policy involved in the proposed diversion.

The serious detriment to navigation interests caused by the diversion of water from Lake Michigan and the consequent lowering of the levels of the Great Lakes has already been pointed out. It is pertinent to observe further that the full effect of this diversion is at the present time mitigated to some extent by the fact that it is made from a reserve that has accumulated in these years of plenty. There is every reason to apprehend that when years of low precipitation return the harmful effects will be still more severely felt.



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Considering, therefore, the fact that in practice the Chicago Sanitary District has greatly exceeded the provisions of the War Department permit; considering further its avowed policy largely to increase the present diversion, and having regard to the fact that the proposed Sag and Calumet Channel cannot be of service for sanitation purposes unless the diversion at present permitted should be increased, and that its construction would permit of a largely increased flow through the portion of the channel between Sag and Lockport which cannot, under existing conditions, take place without danger to navigation in the main channel between Lake Michigan and Sag, the Canadian Government regard the construction of the proposed channel as constituting a grave menace to important Canadian interests; and they consider it desirable that Canada's protest as already put forward should be maintained, both on the ground that any diversion of water from Lake Michigan which prejudicially affects the navigation of the Great Lakes infringes the rights secured to Canada by the Ashburton-Webster Treaty of 1842 in the channels in the River St. Lawrence and in the river Detroit and in the other passages and channels referred to in Article 7 of that Treaty, as well as the rights of navigation in boundary waters and in Lake Michigan to which the Dominion is entitled under the Boundary Waters Treaty of 1909, and also on the ground that apart from these Treaties the authorities of the United States or the authorities of any State have not under the recognized principles of International Law any right to divert from Lake Michigan by any means, or for any purpose, such an amount of water as will prejudicially affect the navigation of boundary waters in which both Canada and the United States are deeply and vitally interested. The navigation of these boundary waters, upon the improvement and development of which, as International waterways each Country has spent many millions of dollars, is a question of vital interest to both the United States and Canada and it should be secured absolutely from injurious diversion on either side of the boundary line to the end that the interests of navigation and commerce, common to both countries, may be adequately preserved.

I am desired earnestly to draw the attention of the United States Government to the views of the Canadian Government as here expressed on a question to which they attach great importance, and to urge that the whole matter shall be re-examined with a view to securing in the best manner the common and general interests of all the regions adjoining the Great Lakes and of meeting the serious objections which the Canadian Government entertain to the continuance of the works against which they consider it their duty to protest.

I have, etc.,

The Honourable WILLIAM JENNINGS BRYAN,  
Secretary of State, etc., etc.

*From the Governor General to His Majesty's Ambassador at Washington*

GOVERNMENT HOUSE,

OTTAWA, June 9, 1916.

No. 135.

SIR,—With reference to my telegram of the 8th instant, I have the honour to transmit herewith, for Your Excellency's information, a copy of the letter from the Secretary of State for External Affairs upon which my telegram was based.

I have, etc.,

(Sgd.) ARTHUR.

His Excellency

The Right Honourable Sir CECIL SPRING RICE, G.C.V.O., K.C.M.G.,

7th June.



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*To His Royal Highness the Governor General:*

The undersigned has the honour to represent to Your Royal Highness that he has had under consideration a Bill—H.R. 12193—now engaging the attention of the Congress of the United States, providing for the construction, repair and maintenance of public works on rivers and harbours and for other purposes.

By a reference to the Bill alluded to it will be observed that commencing at line 23, page 32 of the printed document, provision is made for "the improvement of navigation of the Illinois River authorized by an Act of the Illinois General Assembly approved June 18, 1915, providing for an expenditure of \$5,000,000 therefor by the State of Illinois be and is hereby authorized in accordance with said Act".

It will be further observed that beginning at line 4, page 34, it is: "provided further that the amount of water to be diverted from Lake Michigan through this system of waterways, shall never exceed the rate of two hundred and fifty thousand cubic feet per minute".

The Minister of Marine has been advised by Daniel W. Hoan, Mayor, John L. Klinger, President Merchant and Manufacturers Association and William George Bruce, President Harbour Commission, all of Milwaukee, Wisconsin, that while the provision in the preceding paragraph restricting the volume of water to be diverted, was passed by the Senate, there is danger that it may not find sufficient support in the House of Representatives.

The Government of Canada has already urged strong grounds for the non-interference with the waters discharging through the St. Lawrence system, holding the view that the conservation of these is essential to the trade and commerce of this country.

The undersigned submits that the experience of the past two seasons in the River St. Lawrence has fully justified the position hitherto assumed by the Canadian Government with reference to this question, which position they now desire to reaffirm.

The undersigned recommends that His Majesty's Ambassador at Washington may be so informed by telegraph and requested to renew the protest made by the representatives of the Canadian Government before the Secretary of War in 1912 against any further diversion of the waters discharging through the St. Lawrence system.

Humbly submitted,

(Sd.) R. L. BORDEN,  
*Secretary of State for External Affairs.*

Ottawa, June 7, 1916.

*From His Majesty's Ambassador at Washington to the Governor General*  
No. 130.

BRITISH EMBASSY, WASHINGTON, April 22, 1921.

My LORD DUKE.—I have the honour to transmit to you, herewith, copies of the paper mentioned in the subjoined schedule.

I have, etc.,

(For the Ambassador)

R. L. CRAIGIE.

His Excellency

The DUKE OF DEVONSHIRE, K.G.,

etc.,

etc.,

etc.,

Governor General of Canada.



<i>Name and Date</i>	<i>Subject</i>
British Embassy, Washington, April 22, 1921.	Diversion of water from Lake Michigan.

*Reference*—Canada telegram of April 15, 1921.

*From His Majesty's Ambassador at Washington to the Secretary of State  
of the United States*

No. 285.

BRITISH EMBASSY, WASHINGTON, April 22, 1921.

SIR,—I have the honour to inform you that my attention has been drawn by the Canadian Government to statements recently made public to the effect that the authorities of the city of Chicago are about to approach Congress with a view to obtaining legislative authority to increase the diversion of water from Lake Michigan for the use of the Chicago Sanitary Canal up to, and even possibly beyond, a rate of 10,000 cubic feet per second.

For convenience of reference I may perhaps be permitted to recall the earlier correspondence that has taken place on this subject: in a note dated March 17, 1913, His Majesty's Ambassador made known to the Secretary of State the attitude of steadfast opposition which Canada has consistently adopted to the policy involved in the proposed diversion. Mr. Bryce took the opportunity to point to the serious prejudice caused to Canadian navigation interests by the diversion of waters from Lake Michigan and the consequent lowering of the levels of the Great Lakes, even when such diversion had been made from a reserve that had accumulated in years of plenty. He further represented that any diversion of water from Lake Michigan which prejudicially affected the navigation of the Great Lakes constituted an infringement of the treaty rights secured to Canada by the Ashburton-Webster Treaty of 1842 in so far as concerned the channels of the rivers St. Lawrence and Detroit and other channels and passages mentioned in Article 7 of that Treaty. It was pointed out that such diversion was also an infringement of those rights of navigation in boundary waters and in Lake Michigan to which the Dominion is entitled under the Boundary Waters Treaty of 1909.

In drawing attention again to the above representation, I should like to lay stress upon the fact, quoted by Mr. Bryce that, apart from the question raised by these specific treaty stipulations, the recognised principles of International Law do not confer either upon the Federal Authorities of the United States or upon any individual State of the Union the right to divert from Lake Michigan, by any means or for any purpose, such an amount of water as will prejudicially affect the navigation of boundary waters in which both Canada and the United States are interested.

The existing diversion of water has not been acquiesced in by the Canadian Government and is, in fact, greatly in excess of the amount authorised by the Secretary of War in December, 1901. It has already done considerable harm and the Water Power interests throughout all the Great Lakes and the St. Lawrence system, from Lake Huron to tide water, look upon the present situation with apprehension—an apprehension which is shared by the Canadian Government.

The United States Government will, I think, agree that no solution of the area question is likely to be permanently sound or satisfactory unless it is based upon a recognition of the principle, established by international practice, that



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no permanent diversion should be permitted to another watershed from any watershed naturally tributary to waters forming the boundary between two countries.

In drawing your attention to the attitude consistently taken by the Canadian Government upon this question, I venture to express the confident hope that the United States Government will not give their approval to the application of the Chicago authorities or take any steps in this matter which so closely affects Canadian interests without in the first instance arranging for a discussion of the matter with the Canadian Government.

I have etc.,

The Honourable CHARLES H. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

*From His Majesty's Ambassador at Washington to the Governor General*

No. 156

BRITISH EMBASSY,

WASHINGTON, May 17, 1921.

MY LORD DUKE,—I have the honour to transmit to you, herewith, copies of the paper mentioned in the subjoined schedule.

I have the honour to be,

My Lord Duke,

Your Excellency's most obedient, humble servant,

(For the Ambassador)

MAURICE PETERSON.

His Excellency

The DUKE OF DEVONSHIRE, K.G.,

etc., etc., etc.

Governor General of Canada.

NAME AND DATE.	SUBJECT
Note from the Secretary of State, Washington, D.C., May 11, 1921.	Diversion of Water from Lake Michigan.

*Reference:* Canada telegram of April 15, 1921.

*From the Secretary of State of the United States to the Governor General*

No.

DEPARTMENT OF STATE,

WASHINGTON, May 11, 1921.

EXCELLENCY,—I have the honour to acknowledge the receipt of your note No. 285, dated April 22, 1921, by which you inform me that recently statements have been made public to the effect that the authorities of the city of Chicago are about to approach Congress with a view to obtaining legislative authority for the withdrawal of water from Lake Michigan for the use of the Chicago Sanitary Canal, and bring to my attention the solicitude of the Canadian Government that no diversion of the waters of Lake Michigan may be permitted which will prejudicially affect the navigation of the boundary waters between Canada and the United States.



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I have the honour to inform you that it had been ascertained that no bill has been introduced in either House of Congress with the object of authorizing the diversion of additional waters from Lake Michigan, and that no information, other than that afforded by your note, has come to the attention of this Department that proposals are under consideration which may lead to the introduction of such bills. The Department will be pleased to watch for developments in this situation and to give further consideration to the suggestions of your note in connection with any proposals that may be made touching this matter or bills that may be introduced in Congress concerning it.

Accept, Excellency, the renewed assurances of my highest consideration.

(Sgd.) CHARLES E. HUGHES.

c. 711.4216 M 58/16.

*From His Majesty's Ambassador at Washington to the Governor General*

No. 155

BRITISH EMBASSY,

WASHINGTON, June 6, 1922.

My Lord, -With reference to my despatch No. 156 of the 17th of May 1921. I have the honour to inform you that my attention has been drawn to the following statements which appear in a report entitled: "Report on the Diversion of Water from the Great Lakes and Niagara River 1921" by Colonel Warren of the United States Corps of Engineers:—

"The diversion through the Chicago Sanitary Canal averaged 8,800 cubic feet per second in 1917, although some daily averages were 10,000 cubic feet per second or more. Of this diversion, 6,800 cubic feet per second is incidentally used in the development of power." (page 19).

"It is definitely known that the diversion of the amount of water authorized to be taken by the terms of the permit of 1903, namely, 4,167 cubic feet per second, at mean stages would lower the level of Lakes Michigan and Huron about 0.2 foot, of Lakes Erie and Ontario about as much, and of the St. Lawrence River at Lock 25 about 0.28 foot. The average diversion for 1917, 8,800 cubic feet per second, being uncompensated, has lowered the level of Lakes Michigan and Huron about 0.43 foot, of Lakes Erie and Ontario about 0.41 foot, and of the St. Lawrence River at Lock 25 about 0.57 foot. Damage varying in amount with the locality extends from the lower miter sills of the locks at Sault Ste. Marie through all the lakes and connecting channels to tide water in the lower St. Lawrence River, and its amount increases in the same proportion as the diversion at Chicago increases." (page 20).

"... To this total loss of earnings the diversion of the Chicago Sanitary Canal, an average of 8,800 cubic feet per second in 1917, contributed \$2,866,000 annually, and even the diversions for power in the Chippawa-Grass Island pool far below the foot of Lake Erie, lower it nearly one-tenth foot and cause a loss of about \$526,000 each year." (page 44).

"The general estimate arrived at was that the present diversion of 8,800 cubic feet per second has a value to the City of Chicago of about \$7,000,000 a year, or \$800 per cubic foot per second per annum." (page 93)

It is, I believe, the understanding of the Canadian Government that the diversion of water through the Chicago Sanitary Canal should not exceed



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4,167 cubic feet per second whereas, according to Colonel Warren's report, the diversion averaged 8,800 cubic feet per second in 1917, some daily averages rising as high as 10,000 cubic feet per second. Later on Colonel Warren speaks of the "present diversion of 8,800 cubic feet per second."

It will be seen from the earlier correspondence that, in the note which I addressed to the State Department on the 22nd of April, 1921, (No. 285), I made representations in regard to the alleged intention of the City of Chicago to approach Congress with a view to obtaining legislative authority to increase the diversion of water from Lake Michigan for the use of the Sanitary Canal up to, and even possibly beyond, a rate of 10,000 cubic feet per second. In their reply the State Department stated that no bill had been introduced for this purpose in either House of Congress and that, so far as the State Department were aware, no proposals were under consideration which might lead to the introduction of such bills.

Judging from Colonel Warren's report, the Chicago authorities have persistently exceeded the limit of 4,167 cubic feet laid down in the American War Department permit of 1903 and accepted, if I am correctly informed, as the basis for the Boundary Waters Treaty of 1909, Article 3 of which provides that no further.....diversions.....shall be made except.....with the approval.....of a Joint Commission.

I have the honour to enquire whether it is the desire of the Canadian Government that representations in the above sense should be addressed to the United States Government.

A bill introduced in the House of Representatives on April 18th by Mr. Shaw and referred to the Committee on Rivers and Harbours is also enclosed. The purpose of this bill is to limit to 4,167 cubic feet per second the quantity of water which may be withdrawn from Lake Michigan by the Sanitary District of Chicago. I understand that the motive which inspired Mr. Shaw to introduce this measure was that the present excessive diversion of water has caused floods in the District of Illinois which he represents.

I have forwarded a copy of this despatch to His Majesty's Principal Secretary of State for Foreign Affairs.

I have, etc.,

(Signed) A. C. GEDDES.

HIS EXCELLENCY,

The LORD BYNG OF VIMY.

Enclosure in No. —

H. R. 11348

67th Congress, 2nd Session.

# IN THE HOUSE OF REPRESENTATIVES

April 18, 1922

Mr. Shaw introduced the following bill; which was referred to the Committee on Rivers and Harbours and ordered to be printed.

## A BILL

*Governing the withdrawal of water from Lake Michigan by the Sanitary District of Chicago.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War is hereby authorized and directed to prescribe regulations to govern the withdrawal of



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water from Lake Michigan by the Sanitary District of Chicago, a municipal corporation organized and existing under the laws of the State of Illinois, or its legal successor, through the Chicago and Calumet Rivers, and through artificial channels which have been heretofore or may hereafter be constructed: Provided, That no greater quantity than four thousand one hundred and sixty-seven cubic feet of water per second shall be withdrawn from Lake Michigan by the said Sanitary District of Chicago: Provided further, That the Secretary of War is hereby authorized to construct, at suitable points in the Chicago and Calumet Rivers, such controlling works as may be necessary to regulate the flow in accordance with the provisions of this Act.

*From the Counsel for the Dominion Marine Association to the Prime Minister*

KINGSTON, ONT., June 7, 1923

SIR,—I am instructed by the Executive Committee of the Dominion Marine Association to refer to a letter which I had the honour to write to you on the 10th April, 1922, regarding the Chicago Drainage Canal, and to ask you whether it is not possible for the Dominion Government to take some action to assist in preventing the further improper diversion of water at Chicago. The Present continued low levels on the lakes seriously decrease the carrying capacity of the fleet and as the lack of necessary depth of water is undoubtedly due in part to what is going on at Chicago, vessel owners fear that conditions will go from bad to worse.

Having regard to the treaty of 1910 and with due regard to the restriction imposed by the Secretary of War in 1912 limiting the diversion to 4,187 cubic feet per second, and to the fact also that the process of dilution and flushing at present adopted by the Sanitary Trustees at Chicago is wasteful and, in the opinion of this Association, not justified by the terms of the treaty relating to the priority of rights of user; it is submitted that some representation should be made with a view to asserting the rights of the Dominion on the Great Lakes and St. Lawrence now so seriously prejudiced.

I beg to commend the matter to your earnest consideration and shall hope to be favoured with advice as to what action is considered proper.

I have etc.,

(Sgd.) FRANCIS KING

Right Hon. W. L. MACKENZIE KING, C.M.G., &c.,  
Prime Minister, Ottawa, Ontario.

*From the Under-Secretary of State for External Affairs to the  
Counsel for the Dominion Marine Association*

OTTAWA, June 12, 1923.

DEAR SIR,—I am desired by the Secretary of State for External Affairs to acknowledge the receipt of your letter of the 7th instant, on the subject of diversion of water from the Great Lakes at Chicago, and to inform you that the matter will be referred to the technical officers of the Government for consideration and report.

Yours etc.,

(Sgd.) JOSEPH POPE

FRANCIS KING, Esq., K.C.,  
Counsel for the Dominion Marine Association,  
Kingston, Ontario.



SESSIONAL PAPER No. 180

*From the Counsel for the Dominion Marine Association to the Under-Secretary of State for External Affairs.*

KINGSTON, ONT., September 26, 1923.

SIR,—I am directed to inquire on behalf of the Dominion Marine Association what action, if any, is being taken by way of active protest against the diversion of water from the Great Lakes at Chicago. The Association has been deeply interested in the question since 1912 when it was represented at the hearing by the Secretary of War at Washington, on which occasion the limitation of 4167 c.f.s. was maintained, and on repeated occasions since then it has urged the Dominion Government by letters and representations made to the Prime Minister for the time being, and to various Departments, the need of intervention to maintain for Canada the water levels essential for safe navigation. The difficulties heretofore experienced are accentuated by conditions prevailing at the present time as the loss of an inch of available draft of water results in the corresponding loss of carrying capacity measured in tons of freight. Canadian vessel owners, and in fact all transportation interests in the country, are deeply concerned.

Recently the Trustees of the Sanitary District of Chicago waited upon the Executive Committee of this Association to outline their proposals for establishing compensating works in consideration of being allowed to withdraw 10,000 c.f.s. The Association has not seen any plans and is greatly in doubt as to the possibility of applying remedies satisfactorily in the manner proposed even without increasing the amount of water withdrawn. It has made inquiry again in certain quarters and it has been informed that your Department would be able to give advice.

I would, therefore, ask you to be so good as to let me know for the benefit of the Association what attitude is being taken by the Dominion in the matter and whether the subject is receiving the consideration which its importance appears to demand. I shall be glad to be favoured with an early reply.

I have, etc.,

(Signed) FRANCIS KING.

Sir JOSEPH POPE, K.C.M.G.,  
Under-Secretary of State for External Affairs,  
Ottawa, Ontario.

*From the Under-Secretary of State for External Affairs to the Counsel for the Dominion Marine Association.*

OTTAWA, October 6, 1923.

SIR,—I have been out of town for a few days, and only received a day or two ago your letter of the 26th September last, enquiring on behalf of the Dominion Marine Association what action, if any, is being taken by way of active protest against the diversion of water from the Great Lakes at Chicago.

As you are aware, the Secretary of State for External Affairs is at present in England, attending the meetings of the Imperial Conference. I am, therefore, not in a position to afford you any information on the subject, nor do I know how far the consideration which the Government no doubt has given thereto may have resulted in any concrete decision. I shall, however, make it my duty to enquire among the Departments of Government most likely to know something of the matter, and will communicate with you again.

I have etc.,

(Signed) JOSEPH POPE.

FRANCIS KING, Esq., K.C.,  
Counsel for the Dominion Marine Association,  
Kingston, Ontario.



14 GEORGE V, A. 1924

*From the Managing Secretary of the Hamilton Chamber of Commerce to the Acting Premier.*

HAMILTON, ONT., September 26, 1923.

SIR,—I am directed to communicate with you with regard to the statement made by Sir Adam Beck, Chairman of the Hydro Electric Power Commission, with regard to the illegal diversion of water from the Great Lakes by the Sanitary district of Chicago and to advise that at a regular meeting of the Board of Directors of the Hamilton Chamber of Commerce held this date, a resolution was passed placing ourselves on record that the Federal House should be urged to press for an immediate adjustment of this matter with the United States.

Ontario has had within the last week or so a visit from a number of officials of the sanitary district of Chicago, the object of which was to facilitate negotiations urging towards an adjustment of the difficulty in which the sanitary district of Chicago finds itself by reason of its illegal diversion of water from the Great Lakes system to the Mississippi River. We are told that this action is equivalent to a loss of \$35,000,000 a year in water-power or 5,000,000 tons of coal annually. In addition it must be clear that such action must materially affect the level of the Great Lakes producing as a consequence a most serious effect upon navigation.

We believe that this is a subject of great importance and one which should be dealt with very promptly. The Government's serious consideration is therefore respectfully requested.

I have etc.,

F. P. HEALEY,

*Managing Secretary.*

Honourable W. S. FIELDING,

Acting Premier,

Parliament Buildings, Ottawa, Ont.

*From the Assistant Private Secretary of the Acting Premier to the Managing Secretary of the Hamilton Chamber of Commerce*

OTTAWA, September 27, 1923.

DEAR SIR,—In the absence of Mr. Fielding, I beg to acknowledge receipt of your letter of the 26th instant, in regard to diversion of water from Great Lakes to Mississippi River.

Your letter will be brought to the attention of Mr. Fielding upon his return to Ottawa.

Yours faithfully,

*Assistant Private Secretary.*

F. P. HEALEY, Esq.,

Managing Secretary, the Hamilton Chamber of Commerce,

Hamilton, Ontario.

*From the Counsel for the Dominion Marine Association to the Under-Secretary of State for External Affairs.*

KINGSTON, ONT., October 19, 1923.

SIR,—I have the honour to refer to your letter of the 6th instant with reference to the diversion of water from the Great Lakes at Chicago, and to inform you that at a meeting of the Executive Committee of the Dominion Marine



SESSIONAL PAPER No. 180

Association held in Toronto on the 17th instant the matter was further considered and the following resolution was unanimously adopted:—

“That the Dominion Marine Association protests in the most emphatic terms against any compromise with the Sanitary District of Chicago in its demand for diversion of water from the Great Lakes in excess of the 4,167 cubic feet per second authorized by the United States Secretary of War in 1912, and urges upon the Canadian Government the need of more active measures than have been apparent to date, with a view to securing from the United States Government enforcement of the existing order of the Federal authorities.”

I was directed to communicate this resolution to the proper departments of the Government of Canada, and I am, accordingly, addressing letters containing copies to the Rt. Honourable the Prime Minister and to the Honourable the Ministers of Public Works, Railways and Canals, and Marine.

The question, however, is of such general importance that there are doubtless many other departments of the Government directly interested and I am, therefore, communicating direct with you and would ask you to be so good as to forward the resolution in the proper direction.

I shall be very grateful to you also for such information as you may find available in pursuance of the terms contained in your letter of the 6th instant, and shall be very pleased to lay before the Executive Committee of this Association any advice you think proper on the subject.

I have, etc.,

(Signed) FRANCIS KING.

Sir JOSEPH POPE, K.C.M.G.,

Under-Secretary of State for External Affairs,  
Ottawa, Ontario.

*From the Under-Secretary of State for External Affairs to the Counsel for the Dominion Marine Association*

OTTAWA, October 21, 1923.

SIR,—I am in receipt of your letter of the 19th instant, on the subject of the diversion of water from the Great Lakes at Chicago, and in reply to inform you that the matter will be referred to the appropriate officers of the Government for consideration.

Yours very truly,

(Signed) JOSEPH POPE.

FRANCIS KING, Esq., K.C.,

Counsel for the Dominion Marine Association,  
Kingston, Ontario.

*From the Mayor of Collingwood to the Acting Prime Minister*

November 23, 1923.

Honourable W. S. FIELDING,

Acting Prime Minister,  
Ottawa, Ontario.

DEAR SIR,—It is proposed to send delegates from interested Municipalities to Ottawa to wait on the Federal Government asking that the United States.



14 GEORGE V, A. 1924

Government be memorialized at Washington with a view to having the City of Chicago prevented from diverting the waters of Lake Michigan, contrary to treaty between Canada and the United States.

From estimates made and submitted at various meetings held to protest against the actions of Chicago it would appear that lake levels and consequently lake navigation are being seriously affected by such action.

We are interested in this matter in Collingwood and are prepared to support a peaceful but firm protest against, what appears to us, a violation of treaty rights and a serious menace to Canadian Lake Transportation and Canadian Industry.

May I ask whether the Federal Government has yet decided to make representations of any such character at Washington? We are interested enough in this matter to join the delegation to Ottawa but if the Government has already decided on the action to be taken I can perceive no reason for action on our part at this time.

Yours very truly,

(Signed)) J. ROBERT ARTHUR,

Mayor

*From the Private Secretary of the Acting Prime Minister to the Mayor of Collingwood*

OTTAWA, November 26, 1923.

DEAR SIR,- In the absence of Mr. Fielding I beg to acknowledge receipt of your letter of 23rd instant in regard to the diversion of the waters of Lake Michigan by the city of Chicago.

Your communication will be placed before the Minister upon his return to Ottawa.

Yours faithfully,

*Private Secretary.*

His Worship MAYOR ARTHUR,  
Collingwood, Ontario.

*From the Governor General to His Majesty's Chargé D'Affaires at Washington*

No. 170.

GOVERNMENT HOUSE,

OTTAWA, December 19, 1923.

SIR,—I have the honour to inform you that numerous communications have been received by the Canadian Government from various interests and corporate bodies directly concerned, protesting vigorously against the diversion of water from Lake Michigan. The position of the Government of Canada in opposition to and in protest of the injurious effects of this diversion, both to navigation and water power, has been fully declared in representations which have been made to the Government of the United States. The attitude of the Canadian Government was clearly made known in a brief filed with the Secretary of War of the United States on the 27th March, 1912, and in Governor General's despatches No. 145 of the 23rd November, 1912, No. 16 of the 25th February, 1913, telegram of the 8th of June, 1916, No. 135 of the 9th June, 1916, and Secret telegram of the 15th April, 1921, to His Majesty's Ambassador at Washington for transmission to the Government of the United States.



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In connection with the aforementioned representations, it has been brought to the attention of the Canadian Government that on or about the month of June, 1923, the Government of the United States was granted an injunction restraining the Sanitary District of Chicago from diverting water from Lake Michigan and, further that this injunction would not become active for a period of six months, to permit the Sanitary District time in which to appeal to the Supreme Court of the United States.

I shall be grateful if you will inform the Government of the United States that the declared attitude of the Government of Canada in the above matter is unchanged.

My Government request that appropriate enquiries may be made regarding the legal proceedings undertaken by the Government of the United States, which the Canadian Government confidently trusts will be vigorously pressed.

I have, etc.,

(Signed) BYNG OF VIMY.

His Majesty's Chargé d'Affaires,  
British Embassy, Washington.

*From the Under-Secretary of State for External Affairs to the Mayor  
of Collingwood*

OTTAWA, December 20, 1923.

SIR, —With reference to your letter of the 23rd ultimo, addressed to the Rt. Hon. W. S. Fielding, at that time Acting Prime Minister, regarding the diversion of the waters of Lake Michigan by the Chicago Drainage Canal, I beg to say that this question is now engaging the attention of the Government.

I have, etc.,

(Signed) JOSEPH POPE.

His Worship the Mayor,  
Collingwood, Ontario.

*From the British Charge d'Affaires at Washington to the Governor General*

BRITISH EMBASSY,

WASHINGTON, D.C., December 21, 1923.

No. 447.

MY LORD,—I have the honour to report that during the last session of Congress a special Senate Committee was appointed by the Vice-President to investigate the problem of a nine-foot channel in the waterway from the Great Lakes to the Gulf of Mexico and to enquire into the navigability of the Mississippi, Ohio and Missouri rivers, with a view presumably, to exploring the possibility of establishing direct maritime communication between the Great Lakes and the South Atlantic and Pacific Oceans.

This project continues to interest the Senate, and a sum of \$10,000 has now been allotted to the Committee, which consists of five senators and seven Representatives, for expenses connected with the calling of witnesses, the collection of relevant data, etc., in connection with their investigations.

I understand that the proposals mentioned above have long been of considerable interest to the Dominion Government since, if carried into effect they must necessarily entail the use of large volumes of water drained from



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the Great Lakes. I shall not fail, therefore, to keep Your Excellency informed of all further developments in the matter.

A copy of this despatch is being communicated to His Majesty's Principal Secretary of State for Foreign Affairs.

I have the honour to be, my Lord,

Your Excellency's most obedient humble servant,

His Excellency,

The LORD BYNG OF VIMY, G.C.B.,

etc., etc., etc.,

Ottawa, Canada.

(Sd.) H. G. CHILTON.

*From Sir Adam Beck to the Prime Minister*

Canadian National Telegram

Hon. MACKENZIE KING,  
OTTAWA, ONT.

TORONTO, ONT., February 2, 1924.

I am informed what is known as the McCormick Bill purporting to authorize the construction of a canal and diversion of water from the Great Lakes to the Gulf of Mexico has been referred to a special committee for investigation and report the committee are meeting to hear evidence on Monday February eleventh the commission considers this diversion of water a serious interference with the power projects administered by the commission on behalf of the municipalities and the province of Ontario who are vitally interested and have an investment approximately two hundred and fifty million dollars I hope you will take the necessary action to properly protect and safeguard all interests concerned and greatly oblige.

ADAM BECK.

*From the Governor General to His Majesty's Charge  
D'Affaires at Washington.*

CANADA

No. 19

GOVERNMENT HOUSE.

OTTAWA, February 9, 1924.

SIR,—With reference to your despatch No. 447 of the 21st December, on the subject of a special Committee of the United States Senate appointed to investigate the problem of a nine-foot channel in the waterway from the Great Lakes to the Gulf of Mexico, I have the honour to transmit, herewith, a copy of a letter from the Department of the Secretary of State for External Affairs setting forth the views of my Government on the matter and requesting that you will be good enough to communicate the sense of this letter to the Government of the United States.

It is upon the last paragraphs of this letter that my telegram No. 15A. of the 8th February was based.

I have the honour to be, Sir,

Your most obedient, humble servant.

(Sgd.) BYNG OF VIMY.

His Majesty's Chargé d' Affaires,  
British Embassy, Washington  
February 8th



SESSIONAL PAPER No. 180

*From the Under-Secretary of State for External Affairs  
To the Governor General's Secretary*

OTTAWA, February 8, 1924.

No. 447.

SIR,—With reference to a despatch from His Majesty's Charge d'Affaires at Washington to the Governor General, dated 21st December, 1923, on the subject of a special Committee of the United States Senate appointed by the Vice-President to investigate the problem of a nine-foot channel in the waterway from the Great Lakes to the Gulf of Mexico and to enquire into the navigability of the Mississippi, Ohio and Missouri Rivers with a view presumably to exploring the possibility of establishing direct maritime communication between the Great Lakes and the South Atlantic and Pacific Oceans, I have the honour to represent that Bills before both the United States Senate and the United States House of Representatives, after defining the nature of the work to be done in the stretch above mentioned, proceed to confer upon the Sanitary District of Chicago the legal right to divert for sewage dilution and navigation 10,000 cubic feet of water per second from Lake Michigan upon condition that the said district shall pay into the Treasury of the United States such sums as may be estimated to be its reasonable share of the cost of constructing compensating works at several points for the purpose of controlling and restoring to the lakes above mentioned, the levels lost by reason of this diversion.

In that connection it is observed that no provision is made for the restoration of the levels of the St. Lawrence River from its head to tidewater. In other words, the restoration to be provided is to be in the waters where United States navigation predominates but none is provided for the waters so extensively used by Canadian shipping.

Representations that have been made to the Department of Marine and Fisheries refer not only to the loss of levels that affect navigation but also to the diversion of water for power purposes both in the international stretches where compensation may be determined and in the international stretches below Cornwall, in the Province of Quebec. In that connection it is submitted that the limit of 10,000 cubic feet of water per second, as contemplated by the proposed legislation, is about 1,500 c.f.s. more than is being diverted at present and it is possible that the proposed legislation may mean that the 10,000 c.f.s. is allowed for diversion and power at Lockport whilst the amount that would be required for lockages may be extra.

Having regard to the foregoing, I have the honour to represent that the Canada Government is unalterably opposed to the proposed diversion of water from the Great Lakes watershed to that of the Mississippi to the great detriment of navigation from Sault Ste. Marie to tidewater. The diversion that has already taken place at Chicago has lowered the waters of the Great Lakes to an extent that is now well known. It affects harbours that have cost many millions of dollars to deepen by dredging. It affects the locksills of the Sault Ste. Marie Canals, the Welland Canal and the St. Lawrence Canal, and it also injuriously affects the ocean shipping channel between Montreal and the sea, where the Government of the Dominion of Canada have spent many more millions of dollars in dredging operations. How great the injuries sustained by navigation interests are may be gathered from the fact that every inch of navigable water means an additional 60 to 80 tons of carrying capacity. The waters of the Great Lakes are the heritage of both the people of the United States and the people of Canada and quite obviously they should be conserved for the interests of both peoples.



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It is therefore sincerely to be hoped that the Government of the United States will not only not permit any further diversion of water from Lake Michigan but will intimate to, and if necessary insist, upon the Sanitary District of Chicago adopting some more scientific method of sewage disposal.

I am to request that His Excellency may be humbly moved to ask His Majesty's Chargé d'Affaires to communicate the sense of this communication to the Government of the United States.

I am to add that this Government is in receipt of information that the hearings on the Bills now before the United States Senate and House of Representatives, dealing with the matter, will commence at Washington on Monday of next week, and I am further to request that His Excellency may be humbly moved to cause His Majesty's Chargé d'Affaires to be informed by telegraph that it is proposed to send Mr. W. J. Stewart, Chief Hydrographer, to Washington to be present at these hearings on behalf of the Canadian Government, and asked that the necessary arrangements for Mr. Stewart's attendance at these hearings should be made.

I have the honour to be, sir,

Your obedient servant,

(Sd.) JOSEPH POPE,

*Under-Secretary of State for  
External Affairs.*

The Governor General's Secretary,  
Ottawa.

#### Copy of Code Telegram

*To H.B.M. Ambassador at Washington from the Governor General*

OTTAWA, February 8, 1924.

15 A.

With reference to your despatch December 21st, No. 447. Canadian Government is in receipt of information that hearings on Bills, now before United States Senate and House of Representatives, dealing with matter, will commence at Washington, on Monday next week, and it is proposed to send Mr. W. J. Stewart, Chief Hydrographer, to Washington to be present at these hearings on behalf of Canadian Government and ask that necessary arrangements for Mr. Stewart's attendance at these hearings should be made.

Despatch follows by mail.

(Sd.) BYNG.

#### Copy of Telegram

*From the British Chargé d'Affaires at Washington to the Governor General*  
Code.

WASHINGTON, February 11, 1924.

No. 14.

Your telegram No. 15 A. I am informed by State Department that no date has yet been fixed for the hearings on this Bill.

(Sgd.) CHILTON.



SESSIONAL PAPER No. 180

*From the Governor General to His Britannic Majesty's Ambassador at Washington*

Telegram.

OTTAWA, February 11, 1924.

19 A.

My telegram February 8.

Marine Department has ascertained that Committee to deal with question of Waterway from Great Lakes to Gulf of Mexico has postponed hearings until sometime in March and in consequence visit of Mr. Stewart is cancelled.

(Sd.) BYNG.

*From His Majesty's Chargé d'Affaires at Washington to the Governor General*

No. 66.

BRITISH EMBASSY.

WASHINGTON, February 13, 1924.

MY LORD,—I have the honour to transmit to Your Lordship, herewith, copies of the paper mentioned in the subjoined schedule.

I have the honour to be,

Your Lordship's

most obedient, humble servant.

(Signed) H. G. CHILTON.

His Excellency

The Governor General of Canada.

NAME AND DATE.	SUBJECT.
To the Department of State, Washington, D.C., February 13, 1924.	Views of Canadian Government on the subject of a special Committee of the United States senate appointed to investigate the problem of a nine-foot channel in the waterway from the Great Lakes to the Gulf of Mexico and to enquire into the navigability of the Mississippi, Ohio and Missouri Rivers.

*Reference:* Ottawa despatch No. 19, of February 9, 1924.

Enclosure in No.

*From His Majesty's Chargé d'Affaires at Washington to the Secretary of State of the United States*

No. 144.

BRITISH EMBASSY.

WASHINGTON, D.C., February 13, 1924.

SIR,—I have the honour to inform you that the Government of Canada have recently noted that a special Committee of the United States Senate has been appointed by the Vice-President to investigate the problem of connecting



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channel in the waterway from the Great Lakes to the Gulf of Mexico and to inquire into the navigability of the Mississippi, Ohio and Missouri rivers, with a view presumably to exploring the possibility of establishing direct maritime communication between the Great Lakes and the South Atlantic and Pacific Oceans. The Dominion Government further understand that certain legislation now before Congress proceeds, after defining the nature of the work to be undertaken in the stretch above mentioned, to confer upon the Sanitary District of Chicago the legal right to divert for sewage dilution and navigation purposes, 10,000 cubic feet of water per second from Lake Michigan upon condition that the said district shall pay into the Treasury of the United States such sums as may be estimated to be its reasonable share of the cost of constructing compensating works at several points for the purpose of controlling and restoring to the lakes in question the levels lost by reason of this diversion of water.

In this connection, the Dominion Government observe that no provision is made for the restoration of the levels of the St. Lawrence River from its head to tidewater. In other words, the restoration to be provided in the legislation above-named is to be in the waters where United States navigation predominates but no such restoration is provided for the waters so extensively used by Canadian shipping.

Reports submitted to the Canadian Government during recent months refer not only to the loss of levels that affect navigation, but also to the diversion of water for power purposes both in the international stretches where compensation may be determined and in the international stretches below Cornwall in the province of Quebec. In that regard, Lord Byng of Viny desires me to point out that the limit of 10,000 cubic feet of water per second, as contemplated by the proposed legislation, is about 1,500 cubic feet per second more than is being diverted at present, and His Excellency considers it possible that the proposed legislation may mean that 10,000 cubic feet per second is allowed for diversion and power at Lockport, while additional water power will doubtless be required for lockages.

In view of the above, I have the honour to inform you that the Government of Canada are unalterably opposed to the proposed diversion of water from the Great Lakes watershed to that of the Mississippi, to the great detriment of navigation from Sault Ste. Marie to tidewater. The diversion that has already taken place at Chicago has lowered the waters of the Great Lakes to an extent that is now common knowledge. This affects harbours upon which many million dollars have been expended in deepening operations. It also affects the lock-sills of the Sault Ste. Marie Canals, the Welland Canal and the St. Lawrence Canals and, further, this diversion of water has a most injurious effect upon the ocean shipping channel between Montreal and the sea, where the Government of the Dominion have spent many more millions of dollars in dredging operations. How great have been the injuries sustained by navigation interests may be seen from the fact that every inch of navigable water means an additional 60 to 80 tons of carrying capacity. The waters of the Great Lakes are the heritage of both the people of the United States and the people of Canada, and the Dominion Government are of opinion that it is quite obvious that these waters should be conserved for the interests of both peoples. The Government of Canada, therefore, sincerely hope that the Government of the United States will not only not permit any further diversion of water from Lake Michigan, but will intimate to, and if necessary insist upon, the Sanitary District of Chicago adopting some more scientific method of sewage disposal than is foreshadowed at present.



SESSIONAL PAPER No. 180

I have the honour to request that I may in due course be furnished with an expression of the views of the United States Government upon the contents of this note, for communication to His Excellency the Governor General of Canada.

I have the honour to be,

with the highest consideration, Sir,

Your most obedient, humble servant,

(Signed) H. G. CHILTON.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.

*From His Majesty's Chargé d'Affaires at Washington to the Governor General*  
No. 68.

BRITISH EMBASSY.

WASHINGTON, February 18, 1924.

MY LORD,—I have the honour to transmit to Your Lordship, herewith, copies of the paper mentioned in the subjoined schedule.

I have the honour to be,

Your Lordship's most obedient, humble servant,

(For H. M. Chargé d'Affaires),

(Signed) JOHN CECIL.

His Excellency,  
The Governor General of Canada.

Name and Date	Subject
From Department of State, Washington, February 15, 1924.	Proposed building of a nine-foot channel in the waterway from the Great Lakes to the Gulf of Mexico.

*Reference:* Washington despatch No. 66 of February 13, 1924.

Enclosure in No.

*From the Secretary of State of the United States to His Majesty's Chargé d'Affaires at Washington*

DEPARTMENT OF STATE,

WASHINGTON, February 15, 1924.

SIR,—I beg to acknowledge the receipt of your note No. 144, of February 13, 1924, concerning the proposed building of a nine foot channel in the waterway from the Great Lakes to the Gulf of Mexico, and the suggested further diversion by the Sanitary District of Chicago of waters of Lake Michigan.



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The contents of your note have been communicated to the appropriate Departments of this Government for consideration and upon receipt of their replies I shall be glad to send you the expression of the views of this Government for which you ask.

Accept, Sir, the renewed assurance of my high consideration.

(Signed) CHARLES E. HUGHES.

Mr. HENRY GETTY CHILTON,

Chargé d'Affaires ad interim of Great Britain.

*From His Majesty's Chargé d'Affaires at Washington to the Governor General*  
No. 70.

BRITISH EMBASSY,

WASHINGTON, February 19, 1924.

MY LORD,—I have the honour to transmit to Your Lordship, herewith, copies of the paper mentioned in the subjoined schedule.

I have, etc.,

(for H. M. Chargé d'Affaires),

His Excellency,

(Signed) JOHN CECIL.

The Governor General of Canada.

Name and Date	Subject
From the Department of State, Washington, D.C., February 16, 1924.	Appeal taken by the Sanitary District of Chicago from the decision of the United States District Court in favour of the Government in connection with diversion of water from Lake Michigan.

*Reference:* Ottawa despatch, Secret, No. 170 of December 19, 1923.

Enclosure in No.

*From the Secretary of State of the United States to His Majesty's Chargé d'Affaires at Washington*

DEPARTMENT OF STATE,

WASHINGTON, February 16, 1924.

SIR,—With reference to your note of December 29, 1923, in regard to the legal proceedings instituted by the Government of the United States against the Sanitary District of Chicago to prevent the unauthorized diversion of water from Lake Michigan, I have the honour to inform you that the Department has been advised by the Solicitor General of the United States that an appeal has been taken by the Sanitary District of Chicago from the decision of the United States District Court in favour of the Government and that the appeal is still pending in the Supreme Court of the United States. The Solicitor General further stated that as soon as the record of the case shall have been printed a motion will be submitted to the court to advance the case for early argument.

Accept, Sir, the renewed assurances of my high consideration.

For the Secretary of State,

(Sd.) LELAND HARRISON.

Mr. HENRY GETTY CHILTON,

Chargé d'Affaires ad interim of Great Britain.



SESSIONAL PAPER No. 180

*From His Majesty's Chargé d'Affaires at Washington to the Governor General*  
No. 72.

BRITISH EMBASSY,

WASHINGTON, February 20, 1924.

My Lord,—I have the honour to transmit to Your Lordship, herewith, copies of the paper mentioned in the subjoined schedule.

I have the honour to be,

Your Lordship's most obedient,

humble servant,

(For H. M. Chargé d'Affaires),

(Signed) JOHN CECIL.

His EXCELLENCY,

The Governor General of Canada.

Name and Date	Subject
From Department of State, Washington, February 18.	Canadian Government's wish to send Mr. W. J. Stewart to Washington to be present at hearings in regard to waterway—Great Lakes to Gulf of Mexico.

*Reference: Washington despatch No. 68 of February 18, 1924.*

Enclosure in No.

*From the Secretary of State of the United States to His Majesty's Charge d'Affaires at Washington*

DEPARTMENT OF STATE,

WASHINGTON, February 18, 1924.

SIR.—I beg to acknowledge the receipt of your note No. 130, of February 9, 1924, in which you state that the Canadian Government wishes to send Mr. W. J. Stewart, Chief Hydrographer of the Dominion Government, to Washington to be present at the hearings to be held by the Committee appointed to investigate the problem of a nine-foot channel in the waterway from the Great Lakes to the Gulf of Mexico and to inquire into the navigability of the Mississippi, Ohio and Missouri Rivers.

Upon inquiry this Department is informed that no time has yet been fixed for the holdings of hearings on this question.

Accept, Sir, the renewed assurance of my high consideration.

(Signed) CHARLES E. HUGHES.

Mr. HENRY GETTY CHILTON,  
Chargé d'Affaires ad interim of Great Britain.



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*From His Majesty's Chargé d'Affaires at Washington to the Governor General*  
No. 94.

BRITISH EMBASSY,

WASHINGTON, March 5, 1924.

My LORD,—I have the honour to transmit to your Excellency, herewith, copies of the paper mentioned in the subjoined schedule.

I have etc.,

(for the Ambassador)

(Signed) H. G. CHILTON.

His Excellency The Governor General of Canada.

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Name and Date	Subject
<hr/>	
"Boston Transcript," February 26th.	Press comment—Diversion of the water on the Great Lakes.

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*Reference:* Washington despatch No. 72 of February 20th, 1924.

Enclosure in No.

*Boston Transcript, February 26, 1924*

## THE FIGHT FOR LAKE MICHIGAN

A question of very great physical importance, and one having both inter-state and international complications, has arisen on our Great Lakes. It is the question whether, for sanitary and other reasons, the Sanitary District of Chicago shall be empowered by a proposed act of Congress, introduced by Representative Hull, to withdraw 10,000 cubic feet of water per second from Lake Michigan and turn it into the Illinois and Michigan canal for the proper drainage of the city of Chicago and for purposes of navigation and of hydro-electric power. This proposition is being actively pressed by the Illinois representatives in Congress, and it is said that this amount of water is actually being taken at the present time, although by the existing permission, which rests only on an order of Secretary Alger twenty-five or more years old, only 4,167 cubic feet may be taken. The new proposition, and the present actual over-stepping of the law, are earnestly opposed by all the States on Lakes Michigan, Huron and Erie, on the ground that the diversion of the water into the Mississippi watershed, through the canal, is steadily lowering the level of the lakes named, and consequently shallowing the harbours and interfering with commerce. Chicago urges the proposition not only (and principally) for the people's health and the lives of the children of Chicago but to improve the navigation between the lakes and the Mississippi and to furnish hydro-electric power. It is urged by the other States that Chicago is taking for this purpose, so desirable to her, the water that belongs to others. Two cases, one of them instituted by the State of Wisconsin, are now before the Supreme Court challenging the power to do this and the Dominion of Canada, which is interested in the supply of water that comes down the Niagara and the St. Lawrence, is also opposing the diversion of the waters of Lake Michigan.



## SESSIONAL PAPER No. 180

The question, of course, would never have arisen but for the geographically striking fact that the Mississippi River, at the point where the Illinois River comes into it, is less than five hundred feet above the sea level, whereas the level of Lake Michigan is 581 feet above sea. The Des Plaines River, which flows southward (and into the Illinois River) just west of Chicago, is only sixteen miles from the shore of Lake Michigan. The result of this condition is that the sixteen-mile strip of land between the lake and the Des Plaines River is a natural dike, and as soon as it was pierced to a sufficient depth by the construction of the canal, the water began to flow from the lake toward the Des Plaines, the Illinois, and the Mississippi. The flow through this canal is capable of control, and it is declared that at the present time the flow is fully equal to the ten thousand cubic feet per second which the Hull bill would permit. Lake Michigan, in the condition, becomes an affluent of both the Mississippi and the St. Lawrence, and it is obvious that it cannot continue to be so extensive a feeder of the Mississippi and also be able to supply so fully the lower lakes and the St. Lawrence. And in fact, the level of the lakes has been perceptibly falling, with the result that the harbours of Lakes Huron and Erie, as well as those of Lake Michigan itself, are shallowing, to their detriment and danger. The level of Lake Huron is the same as that of Lake Michigan. There is a descent of eight and seven-tenths feet in the St. Clair and Detroit rivers between Lake Huron and Lake Erie, and a Niagara plunge of 226.3 feet from Erie to Ontario. If the level of Lake Erie is depressed—as perceptibly it has been—the volume of water flowing over Niagara is by that much diminished, and its power lessened.

The struggle between the States and cities below Chicago on the lakes, and the City of Chicago and State of Illinois, will be watched with interest, even by those not immediately concerned. Naturally the Mississippi valley interest, which is very powerful, will tend to cast itself into the balance on Chicago's side. This with regard to the proposed legislation. The attitude of the United States Supreme Court on the question whether Chicago has already taken what does not belong to her will be based on the law and on justice, presumably with due regard for the natural right of all who dwell on navigable waters to their normal flow.

*From the Governor General to His Majesty's Ambassador at Washington*

No. 39.

GOVERNMENT HOUSE,

OTTAWA, March 13, 1924.

SIR,—With reference to Mr. Chilton's despatch No. 70 of the 19th February, enclosing a copy of a letter dated the 16th February from Mr. Leland Harrison, on the subject of the Chicago Drainage Canal, I should be glad to receive, for the use of my Government, a copy of the note addressed to the United States Department of State on the 29th December, 1923, to which Mr. Harrison's letter is the reply, and also a copy of the previous reply in this matter which, it would appear from Mr. Harrison's letter, was sent to Mr. Chilton.

I have, etc.,

(Signed) BYNG OF VIMY.

His Excellency

The Right Honourable SIR ESME HOWARD, G.C.M.G., K.C.B., C.V.O.,  
H.B.M. Ambassador at Washington.



14 GEORGE V, A. 1924

*From the Governor General to His Majesty's Ambassador at Washington*  
Telegram

OTTAWA, March 17, 1924.

34 A.

The question of the diversion of water from the St. Lawrence watershed into that of the Mississippi by the Sanitary District of Chicago is still causing great concern in Canada, particularly in view of the bill on the subject which has been introduced into Congress, and my Ministers desire that the Government of the United States be informed of their hope that no action will be taken either to confirm or permit the extension of the claims of the Sanitary District to continue any diversion and thus adversely affect important interests in the navigation of the great Lakes and the St. Lawrence River and the development of power, actual or prospective, upon the river or upon interlake connecting waters.

The position of the Government of Canada in opposition to and in protest against the injurious effects of this diversion has been consistently maintained, and is still held, and my Ministers venture to suggest that it would be unfortunate if, now that the development of the St. Lawrence waterway for navigation and power purposes is under consideration, any action should be taken which might adversely affect the possibility of such development. They sincerely trust that this view will commend itself to the Government of the United States.

(Sd.) BYNG.

*From His Majesty's Ambassador at Washington to the Governor General*

BRITISH EMBASSY,

WASHINGTON, March 18, 1924.

No. 111.

My LORD,—I have the honour to acknowledge the receipt of Your Excellency's despatch No. 39 of the 13th instant, and in accordance with the request contained therein, to transmit to Your Excellency herewith copy of a note which Mr. Chilton addressed to the United States Government on December 29th last on the subject of the diversion of water from Lake Michigan by the Sanitary District of Chicago, together with a copy of the reply which was received from the United States Government to this communication.

I have etc.,

(For the Ambassador)

(Sgd.) JOHN CECIL.

His Excellency,  
The Lord BYNG of VIMY, G.C.B.,  
etc., etc., etc.  
Governor General of Canada,  
Ottawa, Canada.

*From the Secretary of State of the United States to His Majesty's Ambassador at Washington.*

DEPARTMENT OF STATE, WASHINGTON, January 21, 1924.

EXCELLENCY,—I have the honour to acknowledge the receipt of your Embassy's note No. 1111, of December 29, 1923, regarding the diversion of water from Lake Michigan by the Sanitary District of Chicago.



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A copy of the note has been referred to the proper authorities to ascertain the status of the legal proceedings pending against the Sanitary District of Chicago and a further communication in regard to the matter will be addressed to you upon receipt of their reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

(Sgd.) WILLIAM PHILLIPS.

HIS EXCELLENCY

The RIGHT HONOURABLE

Sir AUCKLAND GEDDES, G.C.M.G., K.C.B.,  
Ambassador of Great Britain.

*From His Majesty's Chargé d'Affaires at Washington to the Secretary of State  
of the United States.*

No. 1111.

BRITISH EMBASSY, WASHINGTON, December 29, 1923.

SIR,—My attention has been drawn by the Government of Canada to the fact that about the month of June last the Government of the United States were granted an injunction restraining the Sanitary District of Chicago from diverting water from Lake Michigan, but that this injunction would not take effect for a period of six months in order to allow time for the Sanitary District of Chicago to appeal to the Supreme Court of the United States. I understand that such an appeal has been lodged but that the Supreme Court has not yet acted upon it.

I have the honour to inform you that the Government of Canada have received numerous communications from various bodies and interests directly concerned with this question, protesting against this diversion of water from Lake Michigan and I would further explain that, owing to the injurious effect of such diversion both upon navigation and water-power, the Dominion Government still maintain their attitude of opposition as already explained to the United States Government in Sir Auckland Geddes' note No. 285 of April 22, 1921, and previous correspondence.

In these circumstances, the Governor-General of Canada has asked me to enquire the present status of the legal proceedings instituted by the Government of the United States with a view to preventing any increase in the diversion of water from Lake Michigan, and to add that the Dominion Government confidently hope that these legal proceedings will be vigorously pressed by the United States Government.

I have etc.,

(Sgd.) H. G. CHILTON.

The Honourable CHARLES E. HUGHES,  
Secretary of State of the United States,  
Washington, D.C.











